

Walt Peterson
22514 Blue Marlin Drive
Boca Raton, Florida 33428
561-901-4989
Defendant Pro Se

October 17, 2016

**United States District Court
for the Middle District of Tennessee**

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U. S. DISTRICT COURT
MID. DIST. TENN.

Craig Cunningham Plaintiff

Case No.3:15-cv-00847

vs.

**NOTICE OF MOTION AND
MOTION TO SET ASIDE OF
DEFAULT PURSUANT TO
FED. R.CIV.P. 55(c)**

Walt Peterson Defendant

TO THE HONORABLE COURT AND ALL PARTIES:

Defendant, Walt Peterson, moves the Court to set aside entry for default for good cause, pursuant to Rule 55 (c) of The Federal Rules of Civil Procedure.

This action was previously stayed to Walt Peterson due to filing of a voluntary bankruptcy petition, which now has been cancelled. I now am refilling with the court since the stay has been lifted.

Defendant claims that the Plaintiffs Allegations are false and misleading, with no basis in fact. Plaintiff filed a lawsuit against the Defendant on November 15th, 2015, according to Proof of Service on file with this Court, Defendant was served on or about November 17th, 2015. The Defendant filed his answer to the Court on December 16th. The Clerk of the Court entered default on or about January 4th as Entry of Default was not dated.

The Defendant plans to defend his position vigorously and asks that the court please review his submitted answer, to fully understand his position and reasoning and firm belief that he is innocent on all counts. Based on the above reasons, the defendant respectfully requests that the Court grant the Defendants motion.

Respectfully Submitted,

Walt Peterson
Walt Peterson

Signed Under Penalties of Perjury

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TABLE OF AUTHORITIES

Cases

Marks v. Crunch San Diego, LLC

F.Supp.3d-----,2014 WL 5422976 (S.D.Cal 2014)

Dominguez v Yahoo! Inc

F. Supp.2nd-----,2014 WL 1096051(March 20, 2014)

Nietro v. Allied Interstate, Inc

2014 WL 4980376 (D Md Oct 3, 2014)

DeLos Santos v. Millward Brown, Inc

2014 WL 2938605 (S.D.Fla June 30, 2014)

Statutes

I. INTRODUCTION

The Court should set aside entry of default against Defendant pursuant to Fed. R. Civ. P. 55(c) because there is good cause for Defendant's delay in appearing in this action. Defendant (name):

Walter Peterson appears pro se on behalf of Defendant individually and doing business as Defendant's unincorporated sole proprietorship.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

Plaintiff filed a lawsuit against the Defendant on November 15th, 2015, According to Proof of Service on file with this Court, Defendant was served on or about November 17th, 2015. The Clerk of the Court entered default on or about January 4th as Entry of Default was not dated .

Defendant became aware of the lawsuit on or about December 17th when he was served (Decl. of Defendant)

Defendant reviewed the lawsuit for the first time during the weekend of November 20th, and immediately began researching the case law and contacted the attorneys for Phone Burner to confirm from them that the system that the Defendant contacted the Plaintiff on was in fact not an automatic dialer.

Defendant did not file an Answer to the Complaint due to personal financial challenges, as he was and still is completely overwhelmed with debt and obligations that are all consuming. The defendant was so pre-occupied with his work that he completely blanked on writing the response, knowing that he was not guilty of any of the accusations, having not violated any portions of the TCPA act. The defendant believes that the accusations of the plaintiff are in fact fraudulent and he has no bases in fact to substantiate his allegations. He respectfully asks that the court please now take his answers into consideration on this matter, substantiated with the law, not hear say, as he stands firm on his grounds that he is not guilty of any wrong doing whatsoever, according to the statutes and the regulations submitted here in.

III. ARGUMENT

Federal Rule of Civil Procedure 55(c) provides that an entry of default may be set aside upon a showing of good cause. Fed. R. Civ. P. 55(c). The Ninth Circuit's good cause standard for setting aside entry of default is the same as that for setting aside default judgment under Rule 60(b), but the test for setting aside entry of default is less rigid and is more generous to the party in default. *Franchise Holding II, LLC v. Huntington Rests. Group, Inc.*, 375 F.3d 922, 925 (9th Cir. 2004).

IV. CONCLUSION For the aforementioned reasons stated in this memorandum and in the defendant's original answers to the plaintiffs complaint, which was filed on December 16th 2016, the defendant ask that the court should set aside the default and any judgment taken against the defendant.

ADDITIONAL INFORMATION

Please be advised that on the 28th day of September 2016 the Lead Defendant Enagic's motion to dismiss was granted against the plaintiff WITH PREJUDICE. Please see Document 156 Filed on 9/28/16

Craig Cunningham, Plaintiff

Please take notice that the undersigned will bring the foregoing Rule 55 MOTION TO SET ASIDE DEFAULT AND DEFAULT JUDGMENT.

DATED this 17th day of October, 2016

Submitted by: Walt Peterson

Walt Peterson Defendant Pro Se

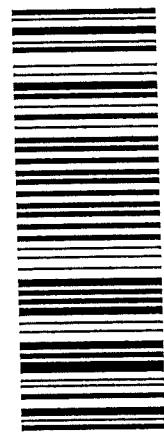
MEMORANDUM OF POINTS AND AUTHORITIES

Defendant acknowledges the he was served with the Complaint on or about November 17th, 2015.

Will Peterson
225 14 Blue Martin Ln.
Boca Raton, FL
33418

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